

1 Joshua B. Swigart, Esq. (SBN: 225557)  
 2 josh@westcoastlitigation.com  
 3 Robert L. Hyde, Esq. (SBN: 227183)  
 4 bob@westcoastlitigation.com  
 5 **Hyde & Swigart**  
 6 411 Camino Del Rio South, Suite 301  
 7 San Diego, CA 92108-3551  
 8 Telephone: (619) 233-7770  
 9 Facsimile: (619) 297-1022

10 Attorneys for the Plaintiff

**FILED**

2008 OCT 20 AM 9:08

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: DMB DEPUTY

11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 Leonard Owings

14 Plaintiff,

15 v.

16 Hunt & Henriques and Arrow  
 17 Financial Services,

18 Defendant.

Case Number:

**08 CV 1931 L NLS**

Complaint For Damages

**Jury Trial Demanded**

21 **INTRODUCTION**

- 22 1. The United States Congress has found abundant evidence of the use of  
 23 abusive, deceptive, and unfair debt collection practices by many debt  
 24 collectors, and has determined that abusive debt collection practices  
 25 contribute to the number of personal bankruptcies, to marital instability, to the  
 26 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair  
 27 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter  
 28 "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

**ORIGINAL**

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1 to insure that those debt collectors who refrain from using abusive debt  
2 collection practices are not competitively disadvantaged, and to promote  
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system  
5 and grantors of credit to consumers are dependent upon the collection of just  
6 and owing debts and that unfair or deceptive collection practices undermine  
7 the public confidence that is essential to the continued functioning of the  
8 banking and credit system and sound extensions of credit to consumers. The  
9 Legislature has further determined that there is a need to ensure that debt  
10 collectors exercise this responsibility with fairness, honesty and due regard  
11 for the debtor's rights and that debt collectors must be prohibited from  
12 engaging in unfair or deceptive acts or practices.

13 3. Leonard Owings, through his attorneys, brings this action to challenge the  
14 actions of Hunt & Henriques (H&H), and Arrow Financial Services (Arrow),  
15 with regard to attempts by Defendants to unlawfully and abusively collect a  
16 debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception  
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which  
19 Plaintiff alleges on personal knowledge.

20 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendants  
21 were knowing and intentional, and that Defendants did not maintain  
22 procedures reasonably adapted to avoid any such violation.

#### 23 JURISDICTION AND VENUE

24 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §  
25 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

26 7. This action arises out of Defendant's violations of the Fair Debt Collection  
27 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair  
28

1 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32  
2 (“RFDCPA”).

3 8. Because Defendants do business within the State of California, personal  
4 jurisdiction is established.

5 9. Venue is proper pursuant to 28 U.S.C. § 1391(c).

### 6 PARTIES

7 10. Plaintiff is a natural person who resides in the City of Winchester, County of  
8 Riverside, State of California.

9 11. Plaintiff is a member of the United States Army and an active duty  
10 servicemember as defined in section 101(d)(1) of title 10, United States Code,  
11 and has been an active duty member of the United States Army since 2003.

12 12. Defendant H&H is from the City of San Jose, the County of Santa Clara, and  
13 the State of California.

14 13. Defendant Arrow is from the City of San Jose, the County of Santa Clara, and  
15 the State of California

16 14. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer”  
17 as that term is defined by 15 U.S.C. § 1692a(3).

18 15. Defendant is a person who uses an instrumentality of interstate commerce or  
19 the mails in a business the principal purpose of which is the collection of  
20 debts, or who regularly collects or attempts to collect, directly or indirectly,  
21 debts owed or due or asserted to be owed or due another and is therefore a  
22 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

23 16. Plaintiff is a natural person from whom a debt collector sought to collect a  
24 consumer debt which was due and owing or alleged to be due and owing from  
25 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §  
26 1788.2(h).

27 17. Defendant, in the ordinary course of business, regularly, on behalf of himself,  
28 herself, or others, engages in debt collection as that term is defined by

1 California Civil Code § 1788.2(b), is therefore a debt collector as that term is  
2 defined by California Civil Code § 1788.2(c).

- 3 18. This case involves money, property or their equivalent, due or owing or  
4 alleged to be due or owing from a natural person by reason of a consumer  
5 credit transaction. As such, this action arises out of a consumer debt and  
6 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

7 **FACTUAL ALLEGATIONS**

- 8 19. At all times relevant to this matter, Plaintiff was an individual residing within  
9 the State of California.

- 10 20. At all times relevant, Defendants conducted business within the State of  
11 California.

- 12 21. Sometime before February 7, 2008, Plaintiff is alleged to have incurred  
13 certain financial obligations.

- 14 22. These financial obligations were primarily for personal, family or household  
15 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.  
16 §1692a(5).

- 17 23. These alleged obligations were money, property, or their equivalent, which is  
18 due or owing, or alleged to be due or owing, from a natural person to another  
19 person and are therefore a “debt” as that term is defined by California Civil  
20 Code §1788.2(d), and a “consumer debt” as that term is defined by California  
21 Civil Code §1788.2(f).

- 22 24. Sometime thereafter, but before February 7, 2008, Plaintiff allegedly fell  
23 behind in the payments allegedly owed on the alleged debt. Plaintiff currently  
24 takes no position as to the validity of this alleged debt.

- 25 25. Subsequently, but before February 7, 2008, the alleged debt was assigned,  
26 placed, or otherwise transferred, to Defendants for collection.

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- 1 26. On or about February 7, 2008, Defendants filed a lawsuit against Plaintiff for  
2 the alleged debt in the County of San Bernardino, California, state case  
3 number CIVSS801559.
- 4 27. Defendants brought this legal action against Plaintiff unrelated to real  
5 property in a judicial district or similar legal entity that is outside of where  
6 Plaintiff allegedly signed the contract sued upon and is outside the judicial  
7 district or similar legal entity where Plaintiff resided at the commencement of  
8 the action. This conduct by Defendants violated 15 U.S.C. § 1692i, as well as  
9 Cal. Civ. Code § 1788.17.
- 10 28. Because Defendants brought this action in a county other than the county in  
11 which Plaintiff incurred the consumer debt or the county in which Plaintiff  
12 resided at the time such proceedings were instituted, or resided at the time the  
13 debt was incurred, Defendants violated Cal. Civ. Code § 1788.15(b).
- 14 29. On or about July 30, 2008, Defendants obtained a default judgment against  
15 Plaintiff through the use of false, deceptive, or misleading representations or  
16 means in connection with the collection of a debt, including, but not limited  
17 to, representing to the court that Plaintiff was not a member of the armed  
18 services and was not, therefore, protected by the Servicemembers Civil Relief  
19 Act when Defendants knew or should have known that was not true, and by  
20 falsely representing to the court that Plaintiff had previously been legally  
21 served a summons and complaint when, in fact, that was not the case.
- 22 30. Through this conduct, Defendant used a false, deceptive, or misleading  
23 representation or means in connection with the collection of a debt.  
24 Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. §  
25 1692e(10), as well as Cal. Civ. Code § 1788.17.
- 26 31. Through this conduct, Defendant used an unfair or unconscionable means to  
27 collect or attempt to collect a debt. Consequently, Defendant violated 15  
28 U.S.C. § 1692f, as well as Cal. Civ. Code § 1788.17.

32. Plaintiff was reprimanded by his commanding officer because of the illegal actions of Defendants.

33. Plaintiff was denied an important position because of the illegal actions of Defendants.

34. The United States Army refused to renew Plaintiff's United States security clearance because of the illegal actions of Defendants.

35. The actions of Defendants caused Plaintiff great stress, anxiety, emotional distress, and other physical manifestations and injury.

### CAUSES OF ACTION

#### COUNT I

#### VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

#### 15 U.S.C. §§ 1692 ET SEQ.

36. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

37. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

38. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

#### COUNT II

#### VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

#### CAL. CIV. CODE §§ 1788-1788.32

39. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

41. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

### COUNT I

#### FAIR DEBT COLLECTION PRACTICES ACT

#### 15 U.S.C. §§ 1692 ET SEQ.

- 42. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- 43. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 44. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

### COUNT II

#### ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

#### CAL. CIV. CODE §§ 1788-1788.32

- 45. An award of actual damages pursuant to California Civil Code § 1788.30(a);
- 46. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- 47. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

**TRIAL BY JURY**

48. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 10/16/08

**Hyde & Swigart**

By: 

Joshua B. Swigart

Attorneys for the Plaintiff

**HYDE & SWIGART**  
San Diego, California



JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Leonard Owings

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart  
411 Camino Del Rio South Suite 301, San Diego, CA 92108

## DEFENDANTS

Hunt &amp; Henriques and Arrow Financial Services

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, GIVE THE LOCATION OF THE LAND INVOLVED.

Attorney's Office

08 CV 1931-L-NLS

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692 et seq.

Brief description of cause:

FDCPA

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
\$75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/16/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

156246

AMOUNT

4350

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 156296 - TC**

**October 21, 2008  
09:04:03**

**Civ Fil Non-Pris**

USAO #.: 08CV1931

Judge.: M. JAMES LORENZ

Amount.: \$350.00 CK

Check#.: 2629

**Total-> \$350.00**

**FROM: OWINGS VS  
HUNT**